

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN TYLER,

Petitioner,

v.

DEPARTMENT OF JUSTICE, Bureau of
Prisons, HARLEY LAPPEN, et al., Director,
DAVID L. WINN, et al., Warden,

Respondents.

Civil Action No. 04-CV-40101-DPW

**RESPONDENT'S¹ OPPOSITION TO PETITIONER'S REQUEST FOR RELIEF
AND MOTION TO DISMISS**

Petitioner, John Tyler ("Petitioner" or "Tyler"), an inmate at Federal Medical Center Devens ("FMC Devens"), brought this habeas corpus action, pursuant to 28 U.S.C. § 2241, challenging the legality of a new policy of the Bureau of Prisons ("BOP") regarding eligibility for placement in Community Corrections Centers ("CCC") at the end of a prisoner's sentence. Petitioner has also challenged the BOP's calculation of good conduct time ("GCT") with respect to his overall sentence.

¹ The only proper respondent in this action is David L. Winn, Warden of FMC Devens where the Petitioner is currently in custody. In Rumsfeld v. Padilla, --U.S.-- (June 28, 2004), the Supreme Court (5-4) reaffirmed longstanding habeas corpus jurisprudence, holding: 1) the only proper respondent in a § 2241 habeas case is the prisoner's immediate custodian; and 2) the only court with jurisdiction is the district court where the prisoner is confined. Accordingly, the other named respondents should be dismissed from this action and removed from the caption.

For the reasons explained in the accompanying Memorandum In Support, the petition fails to state a claim upon which relief can be granted and, therefore, Respondent respectfully moves for dismissal of Petitioner's Petition.

Respectfully submitted,

For the Respondent
DAVID L. WINN

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Anton P. Giedt
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LOCAL RULE 7.1(A)(2) CERTIFICATE

I, Anton P. Giedt, Assistant U.S. Attorney, respectfully request leave from compliance with Local Rule 7.1(A)(2) as Petitioner is incarcerated, acting *pro se*, and is not represented by counsel.

/s/ Anton P. Giedt
Anton P. Giedt
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
DATE: July 13, 2004

I, Anton P. Giedt, Assistant U.S. Attorney, do hereby certify that I have this day served a copy of the foregoing upon the Petitioner by First Class Mail.

/s/ Anton P. Giedt
Anton P. Giedt
Assistant U.S. Attorney

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